IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(L) No.1694 of 2004

State of Jharkhand through Swarnarekha Multi Purpose Project, Kharkai Canal Division, Adityapur, Jamshedpur, District West Singhbhum through, its Executive Engineer….. ….. Petitioner

Versus

Tej Narayan Singh & Another ….. ….. Respondents

with

W.P.(L) No. 1697 of 2004

State of Jharkhand through Swarnarekha Multi Purpose Project, Kharkai Canal Division, Adityapur, District Saraikela-Kharsawan through its Executive Engineer, ….. ….. Petitioner

Versus

Bablu Kumar & Another. ….. ….. Respondents

with

W.P.(L) No. 1701 of 2004

State of Jharkhand through Swarnarekha Multi Purpose Project, Kharkai Canal Circle, Jamshedpur, District Saraikela-Kharsawan through its Executive Engineer….. ….. Petitioner

Versus.

Gopal Kumar Choudhary & Another ….. ….. Respondents

with

W.P.(L) No. 1772 of 2004

State of Jharkhand through Swarnarekha Multi Purpose Project, Kharkai Canal Division, Adityapur, Jamshedpur, District-West Singhbhum, through its Executive Engineer ….. ….. Petitioner

Versus.

Dilip Kumar Singh & Another ….. ….. Respondents

For the Petitioner(s) : Mr. A. Allam, Sr. S.C.-II
: Ms. Nehala Sharmin, J.C. to Sr. S.C.-II
For the Respondents : Mr. V. Shivnath, Sr. Advocate

CORAM : HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

C.A.V. on 15.10.2014 **Pronounced on 21.10.2014**

The petitioner-State of Jharkhand has preferred the writ petitions challenging order dated 13.08.2003 passed by the learned

Labour Court, Jamshedpur in B.S. Case No. 04 of 1993 and batch cases.

BRIEF FACTS:

2. Challenging order of discharge dated 30.03.1993, B.S. Case No. 03 of 1993, B.S. Case No. 04 of 1993, B.S. Case No. 05 of 1993 and B.S. Case No. 06 of 1993 were filed by the complainants/employees seeking reinstatement in service with full back wages and consequential benefits.

3. Respondent-Tej Narayan Singh in W.P.(L) No. 1694 of 2004 was complainant in B.S. Case No. 04 of 1993, Respondent-Bablu Kumar in W. P.(L) No. 1697 of 2004 was complainant in B.S. Case No. 06 of 1993, Respondent-Gopal Kumar Choudhary in W.P.(L) No. 1701 of 2004 was complainant in B.S. Case No. 05 of 1993 and Respondent-Dilip Kumar Singh in W.P.(L) No. 1772 of 2004 was complainant in B.S. Case No. 03 of 1993. The complainants/applicants were working in Swarnarekha Multi Purpose Project from 01.11.1990 as security guards on daily wages of Rs. 24 which later on, was enhanced to Rs. 25.50 per day however, they were not given weekly holidays and other holidays. The applicants were not provided leave and other facilities and their services were terminated on 30.03.1993. The respondent-State of Jharkhand appeared in the proceeding before the Labour Court and filed its show-cause, denying that applicants were employees of Swarnarekha Multi Purpose Project. It was claimed that the

applicants were purely casual labourers working under M/s Industrial Security Agency, Adityapur which used to supply labourers in the project under the agreement dated 01.08.1990. The applicants worked under the said Agency and the Agency made payment to them on agreed rate. On an application filed by the opposite party-State of Jharkhand, all 4 cases were heard together. The learned Labour Court formulated the following issues:

> *"(a). Whether the Swarna Rekha Multipurpose Project is an establishment ?*
> *(b). Whether the applicants were in service of O.P.S. ?*
> *(c) Whether the applicants work for more than six months in Swarna Rekha Multipurpose Project ?*
> *(d)Whether they are entitled for a relief as prayed ?*
> *(e) To what relief or reliefs the applicants are entitled for?*

4. Vide order dated 13.08.2003, the learned Labour Court allowed the B.S. Case No. 03 of 1993 and batch cases, holding that the Swarnarekha Multi Purpose Project is an "establishment" and the applicants worked for more than six months and therefore, they are entitled to protection under Section 26 of the Bihar Shops and Establishment Act, 1953.

SUBMISSIONS:

5. Mr. Allam, the learned Senior counsel appearing for the petitioner in all the writ petitions has submitted that, though no evidence was adduced by the applicants, either oral or documentary on the point whether the Swarnarekha Multi Purpose Project is an

"establishment" still, the learned Labour Court has recorded a finding that the Swarnarekha Multi Purpose Project is an "establishment" and therefore, the said finding cannot be sustained in law. It is further submitted that the applicants were engaged by one M/s Industrial Security Agency, Adityapur which had engaged the applicants and paid wages to them and therefore, there was no employer and employee relationship between the petitioner/opposite party and the respondents.

6. Per contra, Mr. V. Shivnath, the learned Senior counsel appearing for the respondents has submitted that, since the statement made by the applicants was not traversed by the opposite parties in their show-cause nor the opposite parties adduced any evidence in its denial, the learned Labour Court has rightly concluded that the Swarnarekha Multi Purpose Project is an "establishment". It is further submitted that the learned Labour Court has also held that the applicants worked for six months and since this is a question of fact, this Court may not interfere with the finding of fact recorded by the learned Labour Court.

7. I have carefully considered the submission of the learned counsel for the parties and perused the documents on record.

8. From paragraph no. 9 of the impugned order dated 13.08.2003, it appears that the learned Labour Court has noticed that neither the complainant nor the opposite parties have adduced

oral or documentary evidence on the point whether the Swarnarekha Multi Purpose Project is an “establishment”. The learned Trial Court has taken note of the decision of the Hon'ble Supreme Court in *“Banglore Water Supply Sewerage Board Vs. A. Rajappa”* reported in *(1978) 2 SCC 213* and relying on the said case, the defence taken by the State of Jharkhand has been brushed aside by the Labour Court. The learned Labour Court has recorded that the statement made in the application by the applicants/respondents were not traversed by the State of Jharkhand and finally it concluded that the Swarnarekha Multi Purpose Project is an “establishment”.

9. I find that in its show-cause reply filed in the proceeding before the Labour Court, the State of Jharkhand has questioned the maintainability of the application and challenged the jurisdiction of the Labour Court. It was specifically averred that the case does not fall under the purview of Section 26(2) of the Bihar Shops and Establishment Act, 1953. It was also denied that the applicants were employees under the Swarnarekha Multi Purpose Project. The relevant definition in the Jharkhand Shops and Establishment Act are quoted below:

> **Section *2(4)*** *“ employee' means a person wholly or partially employed for hire, wages including salary, reward, or commission in and in connection with any establishment and includes 'apprentice' but does not include member or the employer's family. It also*

includes person employed in a factory who are not worker within the meaning of the Factories Act, 1948 (63 of 1948), and for the purpose of proceeding under this Act, include an employee, who has been dismissed, discharged or retrenched for any reason whatsoever;

Section 2(5) *"employer" means a person who owns or exercise ultimate control over the affairs of an establishment and includes a manager, agent or any other person in the immediate charge of the general management or control of such establishment;*

Section 2(6) *"establishment" means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to any business, trade or profession and includes-*

(1) administrative or clerical service appertaining to such establishment;

(ii) a shop, restaurant, residential hotel, eating house, theatre or any place of public amusement or entertainment;

(iii) such other establishment as the State Government may, by notification, declare to be an establishment to which the Act applies;

but does not include a 'motor transport undertaking' as defined in clause (g) of Section 2 of the Motor Transport Workers Act, 1961 (27 of 1961."

10. From the record of the case, I find that the applicants did not produce any material to show that the State of Jharkhand through the Swarnarekha Multi Purpose Project carries on business, trade or profession including running a shop, restaurant, residential

hotel, eating house, theatre or any place of public amusement or entertainment. The applicants have contended that since the Swarnarekha Multi Purpose Project is supplying water to TISCO and other concern for which they charge money, it is an "establishment". As noticed above, the applicants/complainants did not adduce any evidence either oral or documentary on this point. I find that in the application filed before the Labour Court the complainants have not averred that the Swarnarekha Multi Purpose Project is an "establishment" under the Bihar Shops and Establishment Act. The finding recorded by the labour Court that the statement in the application filed by the complainants has not been traversed is contrary to record of the case. The learned counsel appearing for the petitioners reiterated the stand that the applicants were engaged through Security Agency which paid wages to them.

11. In *"State of Gujrat and others Vs. Pratamsingh Narsinh Parmar"*, reported in *(2001) 9 SCC 713,* it has been held :

> *"If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes "an industry". Ordinarily, a department of the Government cannot be held to be an industry and rather it is a part of the sovereign function."*

12. In the application filed by the complainants the only grievance raised by them was that they have been removed without issuing a charge-sheet or conducting an enquiry. In "*State of Bihar & Others Vs. Himanshu Kumar Vidyarthi & Others*", reported in *(1997) 4 SCC 391*, it has been held that when the appointments are regulated by the statutory rules, the concept of industry to that extent stands excluded.

13. In view of the above, I find that the finding recorded by the learned Labour Court that the Swarnarekha Multi Purpose Project is an "establishment" is erroneous and liable to be interfered with. It is hereby held that the Swarnarekha Multi Purpose Project is not an "establishment" in terms of provision of the Jharkhand Shops and Establishment Act and therefore, B.S. Case No. 03 of 1993, B.S. Case No. 04 of 1993, B.S. Case No. 05 of 1993 and B.S. Case No. 06 of 1993 were not maintainable. The learned Labour Court had no jurisdiction to pass an order under the provision of Jharkhand Shops and Establishment Act.

14. In the result, all the writ petitions are allowed. The impugned order dated 13.08.2003 is quashed.

(Shree Chandrashekhar, J.)

Jharkhand High Court, Ranchi
Dated 21st.of October, 2014
Satyarthy/A.F.R.